Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

John Trochmann,

Petitioner

v.

County of Musselshell, et al.

On Petition for Writ of Certiorari
To the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

John Trochmann
Petitioner
P.O. Box 1486
Noxon, Montana 59853
Telephone 406/847-2735

9 pp

Questions Presented

Defendants, law enforcement officials at Roundup, Musselshell County, Montana, broke the side window of John Trochmann's car and forcibly arrested John Trochmann as John sat in his car at the Sheriff's office in Roundup, Montana, on March 3, 1995. John brought this action for wrongful arrest without probable cause and excessive use of force, among other claims.

The issues presented are as follows:

1. Whether the Court erred by granting summary judgment to defendants and ruling that the law enforcement officers had probable cause to arrest John Trochmann, when defendants arrested and detained John Trochmann without probable cause to believe that John Trochmann had committed any crime.

2. Whether the Court erred by failing to award John Trochmann reimbursement for his attorney's fees pursuant to 42 U.S.C. Section 1988, when the jury specifically found that defendant law enforcement officer O. Buzz Jones had violated John Trochmann's constitutional rights.

List of Parties

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

John Trochmann,

Petitioner,

v.

County of Musselshell; John Bohlman, Musselshell County Attorney, individually and in his official capacity; G. Paul Smith, Musselshell County Sheriff, individually and in his official capacity; Orville Buzz Jones, Musselshell County Sheriff's Deputy, individually and in his official capacity; Dutch Van Syckel, Musselshell County Sheriff's Deputy, individually and in his official capacity; Wanda Spaulding, Musselshell County Sheriff's Deputy, individually and in her official capacity; Woodrow Woody Weitzeil, Musselshell County Sheriff's Deputy, individually and in his official capacity; Department of Public Safety for the City of Roundup and County of Musselshell,

Respondents.

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and TABLE OF AUTHORITIES are not included pursuant to Rule 14(1)(c), as the Petition does not exceed five pages

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below. This case is from the Federal Courts.

The opinion of the United States Court of Appeals appears at Appendix A to this petition, and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 23, 2001. A request for a 30 day extension of time was filed on June 21, 2001, with the Justice allotted to the United States Court of Appeals for the Ninth Circuit. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Constitutional and Statutory Provisions

John Trochmann's Fourth Amendment Right to be free from unreasonable searches and seizures, including excessive force, is involved in this cause,

as is his right to collect attorney's fees as damages pursuant to 42 U.S.C. Section 1988.

STATEMENT OF THE CASE

On March 3, 1995, John Trochmann was sitting in his vehicle at the Sheriff's Department of Roundup, Montana, when law enforcement officers O. Buzz Jones and Dutch Van Syckel approached his vehicle, broke out the side window, and forcibly arrested John Trochmann at gunpoint. John had not committed any crime, and was not in the process of committing any crime.

John claimed the law enforcement officers used excessive force in throwing him to the ground, kicking him, and causing him to remain face down, prone on the ground while handcuffed for six hours at the Roundup jail. The trial court granted defendants' motion for summary judgment on John's arrest without probable cause claim, and John's excessive force claim and other claims were presented to a jury. The jury found in John's favor, finding that defendant O. Buzz Jones violated John's constitutional rights. Thereafter, the trial

court refused to grant John's request for attorney's fees pursuant to 42 U.S.C. Section 1983. The Court of Appeals for the Ninth Circuit affirmed the trial court's decision in an unpublished memorandum, attached hereto at Appendix A.

REASONS FOR GRANTING THE PETITION

On March 3, 1995, John called the Musselshell County Sheriff's Department inquiring about the status of his friend, Dale Jacobi, as Mr. Jacobi had traveled to Roundup, Musselshell County, Montana, and had been arrested by Sheriff's deputies. See Plaintiff's responses to defendants' discovery requests, dated Nov. 10, 1998, passim (the responses incorporated by reference those discovery responses provided in Cause DV 95-74, Montana Fourteenth Judicial District Court). The dispatcher, Vickie Green, answered the call and lied about having Jacobi and Ellena in custody. Id. John called his wife, Caroline, and his relative, David, to ask that they contact the Sheriff's department and inquire about Jacobi, and the calls were placed. Id. John went to Roundup to inquire.

Id. On March 3, 1995, John drove his vehicle to the Sheriff's office and parked in a lawful parking space, waiting while a lawful inquiry was made about Jacobi. As Mr. Trochmann sat in his vehicle defendant Jones exited the Sheriff's office, pointed a loaded shotgun at John's face, and screamed profanities. Second January 19, 1999, Affidavit of John Trochmann. Jones rammed John's vehicle with the shotgun and shattered the window. Id.

Jones and deputy Van Syckel arrested John, drug him into the Sheriff's office and forced him to remain face down, prone on the ground, handcuffed behind the back. Id. No charge was issued against John until approximately midnight, when a makeshift arraignment was held, and bail was set at $100,000. Id. No probable cause hearing was held. Id. All of the charges were later dropped. Id. Viewing the evidence in a light most favorable to John, there remained a genuine issue of material fact concerning whether defendants had probable cause to arrest John. See Rule 56, Fed.R.Civ.P. and Kalina v. Fletcher, 522 U.S. 118, 129 (1997).

At trial the jury determined that Buzz Jones violated John's constitutional rights, thereby allowing John to pass the "central issue" test set forth in Texas State Teachers Assn v. Garland Independent School Dist., 109 S.Ct. 1486 (1989). The price tag attached to a constitutional right violation is elusive and the small amount of damages awarded, plus the verdict, was within the province of the jury. The Court erred in refusing to award attorney's fees to John under 42 U.S.C. Section 1988. See Farrar v. Hobby, 506 U.S. 103, 122 (1992); Ruggiero v. Krzeminski, 928 F.2d 558 (2d Cir. 1992); Fassett v. Haeckel, 936 F.2d 118 (2d Cir. 1991); Domegan v. Ponte, 972 F.2d 401 (1st Cir. 1991); Teitelbaum v. Sorenson, 648 F.2d 1248 (9th Cir. 1981).

CONCLUSION

The petition should be granted. Respectfully Submitted on this 20th day of July, 2001.

_____

John Trochmann, Petitioner